COURT NO. 2

HIGH COURT OF UTTARANCHAL AT NAINITAL.

First Appeal No. 888 of 2001
(Old No. 348/1976)

Collector, Dehradun **…** **Appellant.**

Versus

Mst. Fazal Ilahi (since dead)
Represented through her L.R. Zeshau Ullah
& others **…** **Respondents.**

Sri Bhupender Singh,learned Standing Counsel for the appellant.
Sri Sunil Kumar Jain, Learned counsel for respondents.

Hon. P.C. Verma, J.
Hon. B.S. Verma, J.

This appeal under Section 54 of the Land Acquisition Act is directed against the judgment and decree dated 12.6.1976 passed in L.A. Reference No. 27 of 1963, Smt. Zindi Begum (deceased) & others Vs. Collector Dehradun, by the District Judge, Dehradun, ***(in short the Judge)*** whereby the learned Judge has awarded enhanced compensation to the claimants by setting aside the award granted by the Land Acquistion Officer, Dehradun, mainly on the ground that the learned Judge has wrongly held that the claimants are entitled to compensation in respect of 0.83 acre of additional land of plot no. 58 and the exemplar sale-deed relied upon by the learned Judge was not applicable in the case under appeal.

Brief facts, giving rise to the present appeal, are that an award was given by the the Land Acquisition Officer Dehradun, Sri S.N.Pandita, in respect of total acquired land worth 257.57 acres, the acquisition being made for the Indian Institute of Petroleum. A Notification under Section 4(1) of the Land Acquisition Act ***(hereinafter referred to as the Act)*** on 4.2.1961 and on 26.4.1961. Subsequently, notifications under Section 6(1) of the Act were also published. Ultimately, the award under appeal was given by the Land Acquisition Officer on 31-03-1962. The possession of the waste land and arable land compromising 251.69 acres was taken on 25.9.1961 under Section 17 of the Act and that of remaining area of

5.88 acres on 30-4-1962. The claimants have claimed compensation at higher rates than awarded by the Land Acquisition Officer. The claim of the claimant-respondents has been resisted by the Collector-appellant.

The learned District Judge framed as many as six issues in the Reference under appeal. After considering the entire material before him, the learned District Judge, on Issue No.1, has come to the conclusion that the claimants are entitled to compensation in respect of 0.83 acre of additional land of plot no 58 and the rest of their claim for compensation in respect of addition land fails. To examine the correctness of the finding of the learned Reference Court, in respect of claim for additional land to the tune of 0.83 acre, held by the learned Judge in favour of the claimant-respondents, it is expedient in the interest of justice to narrate the relevant aspect of the case on the basis of which the award has been made. The learned Judge has relied on the Khasara of 1361 Fasali (Ext. 47) in which there is entry in respect of plot no. 58. Khasa plots 58/2 measures 5.80 acres, 58/3 measures 50.98 acres, 58/3/1 measures 0.27 acre, 58/3/2 measures 0.45 acres, 58/3/3 measures 0.72 acres, 58/3/4 measure 0.77 acres, 58/3/5 measure 0.80 acres, 58/3/6 measures 0.27 acre, 58/3/7 measures 1.22 acre and 58/3/8 measures 1.60 acre. Thus, the total area of plot no. 58 as entered in the name of the claimant-respondentcomes to 11.90 acres. In the Khautani for 1366-68 Fasali (Ext. 46) the claimants have been entered as land holders of plot no. 58/2 comprising 5.80 acres. It also comes from the perusal of these documents that out of plot no. 58, an area of 15.53 area is entered in the name of the claimants. There is yet another Khasra of 1370 Fasali (Ext. 48) in favour of the Petroleum Institute, but in this Khasara, there is no mention in respect of names of the claimants, therefore, it is of no avail. Thus from a perusal of entire revenue papers on record, it is thus evident that at the time of acquisition, the claimants were land holders of 15.53 acres out of plot no. 58. The learned Reference Court while dealing plot no. 58 has considered the point as to what area of the claimants' land of plot

58 has been acquired in the present case and not the aspect as to what area has been acquired. It is evident that this total area of 15.53 acres of land belonging to the claimants has been acquired and no potion has been left out of acquisition. The Land Acquisition Officer has taken into consideration area to the tune of 14.70 instead of are worth 15.53 acres.

The learned Reference Court ultimately has awarded amounts of Rs.4,64,012.50 for land, Rs. 73,305.90 for trees, Rs. 1,93,750 for tea bushes, Rs. 16,000/- for machinery and Rs. 1,31,741.38 for buildings, total, Rs. 8,78,809.78. The Land Acquisition Officer has held that the cliamnts are entitled to amount of Rs. 4,78,579.78. In addition to it, interest at the rate of 6% per annum has also been awarded on the additional amount of Rs. 4,00,230/- from 30-4-1962, i.e. the date of possession of the land so acquired.

It has been vehemently argued before us on behalf of the appellant that the learned Reference Court has erred in awarding compensation in respect of additional land of plot of 58 to the tune of 0.83 acre in favour of the claimant-respondents, therefore it has been submitted that the judgment and order, under appeal, be set aside and the order of the Land Acquisition Officer is liable to be upheld. We have given our anxious thought to the entire material on record on this point. We have also dealt with the relevant revenue papers, Exts. 46 and 47 on record. With the help of the learned Standing Counsel, appearing for the appellant, we have closely scrutinized the relevant papers placed on record. Having considered the case from all the four corners, we are satisfied that the learned Reference Court has rightly concluded that the land to the total area of 15.53 areas standing in the names of the claimants-respondents have been acquired. The description of total area of 15.53 acres of plot no. 58 has been dealt with in the impugned judgment and award by the learned Reference Court, therefore, the Land Acquisition Officer councerned was not justified in awarding compensation in

respect of total area of plot No. 58 holding the same to be 14.70 acres instead of 15.53 acres. Thus, clearly the claimants were entitled to get compensation for addition land of 15.53 – 14.70 = 0.83 acre land of plot no. 58. We also find that the learned Reference Court has dealt with each and every aspect very minutely in its judgment before arriving at the conclusions. In our opinion, the learned Court below has rightly awarded interest @ 6% per annum.

It has been next submitted by the learned Standing Counsel for the appellant that the finding of the learned Reference Court in classifying the land in two categories instead of four categories, made by the Land Acquistion Officer is without any basis. We have gone through the entire judgment and award under appeal. The learned Judge has fully considered Inspection Note date 20-9-1961 (Ex.A-6 on record). The Land Acquisition Officer has divided the land in four categories. The learned Judge has, in respect of first three categories, observed that ***"they do not fully adhere to the enunciated criterion. A substantial part of land of the third category is adjacent to the Dehradun-Rishikesh road. Proximity to Government forest would hardly reduce its value. Even the criterion of crop is based on observation at a particular time and not on any recorded date. Most of the land was under tea bushes and not regular crops. No assessment of its quality could, therefore, be made by mere observation. Even the unevenness of this land does not appear to be material. The land is primarily agricultural and very little difference is caused if all the plots are not at the same level. … … In respect of a small plot its unevenness becomes material, but it the plot is a very big one, as in the instant case, its different levels can bt utilized for building purposes without any handicap and in some cases it may even make the constructions give more attractive view. There is nothing to indicate that the land was so uneven as to materially interfere with its use or enjoyment."*** In this regard, the Reference Court has made the following observations:

> ***"Two contour maps have been filed, one by the claimants which is Ex.I and another by the Collector which is Ex.A5. Neither of them indicates that the land put in category 3 is so uneven as to materially affect its enjoyment. In case of agricultureal land, being adjacent to the road makes little difference. When such a big plot is acquired for building proposes it does not make much differences if some land is removed from the road. A good colony can be constructed there with provisions for roads inside it. Proximity to the road assumes special importance only in case of commercial buildings, which is not the case here. Under the circumstances I am of the view that the division of land into the first three categories is not justified. All these categories should be combined in one as Category I and category 4 may be classified as category II.***

In our opinion, the Reference Judge has rightly categorized the land into two categories. The learned Standing Counsel could not point out any illegality in the findings of the learned Reference Court, so as to warrant interference by this Court in this appeal. Having considered the submissions made by the learned Standing Counsel, we are not inclined to find favour with the contentions of the appellant and to take any different view on the findings arrived at by the Reference Court on either of the Issues framed in the case under appeal. The present appeal has no force and is liable to be dismissed.

No other point was urged or argued before us in this appeal.

In the result, the appeal is dismissed. The judgment and decree, under appeal, are upheld. No order as to costs.

01-10-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP